

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

RICHARD P., by and for R.P.,
and DENISE L., by and for K.L.,
Plaintiffs

v. CIVIL ACTION NO. 03-390 ERIE

SCHOOL DISTRICT OF THE CITY OF
ERIE, PENNSYLVANIA, et al.,
Defendants

JURY TRIAL - DAY NO. 1
(PLAINTIFFS & DEFENDANTS' OPENING STATEMENTS)

Proceedings held before the HONORABLE

SEAN J. McLAUGHLIN, U.S. District Judge,

in Courtroom C, U.S. Courthouse, Erie,

Pennsylvania, on Monday, January 23, 2006.

APPEARANCES:

EDWARD A. OLDS, Esquire, and CAROLYN SPICER
RUSS, Esquire, appearing on behalf of the
Plaintiffs.

Ronald J. Bench, RMR - Official Court Reporter

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1 PROCEEDINGS

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3 (Whereupon, the following Excerpt of Jury Trial
4 proceedings occurred on Monday, January 23, 2006, in
5 Courtroom C.)

6

7 THE COURT: Mr. Olds.

8 MR. OLDS: Thank you, your Honor. Good afternoon,
9 how are you all. I think that the facts of this case, I'm
10 certain that the facts of this case are going to be shocking,
11 are going to shock you. I think probably you're going to hear
12 certain evidence in this case that your brain is going to say
13 that can't be true. And your brain's going to want to reject

14 it because what you're going to hear is pretty bad. But this

15 is a real story, there are two sides to it, but some awful

16 things did happen here. And I'm going to bring that out. I

17 guess I'll go into my, I'll bring that out once I start into

18 the details of the case.

19 My clients, Rachel Polancy, who is seated second,

20 sitting next to her father there in the black jacket, and

21 Kristina Long, sitting in the red dress back there, were

22 students at Strong Vincent High School, they were middle school

23 students. They were violently sexually assaulted by a gang of

24 kids. The kids were leaving an after-school detention program.

25 At the time of the assault, Kristina was 12 and

3

1 Rachel was 13. The assault, it's been referred to as a rape,

2 it's an assault or rape involved with Rachel, two other

3 students forced her to engage in oral sex, this occurred across

4 the street from the school. For Kristina, on multiple times.

5 And for Kristina, one of those boys forced her to have oral sex

6 with him.

7 Maybe I'll show you a picture of what they looked

8 like. You need to remember that this happened five years ago,
9 they've changed somewhat. That's what Kristina looked like,
10 and that's Rachel when this happened.

11 Neither of the girls was able to tell their parents
12 about this assault. You'll hear testimony that young kids
13 oftentimes can't communicate that kind of stuff with their
14 parents.

15 But the officials of the school district, we sued
16 the school district here and Ms. Cappabianca. The officials of
17 the school district learned either the next day or within days
18 that there had been a sexual encounter or sexual activity, at
19 least between Charles, the boy, and Kristina. And later they
20 would hear other stories about Rachel, also. When they heard
21 that, they didn't do anything. And a period of time elapsed
22 before they took action. And during that period of time bad
23 things started happening to my clients.

24 The issue, I'm going to get to the specific facts
25 now, really the ultimate issue in this case is whether the

1 school district or the officials were unreasonably or

2 deliberately indifferent to what happened to the girls. We

3 have a time line, I have it here, I don't know if you'll be

4 able to see it here, I'm also going to put it on the TV.

5 Rachel and Kristina both began, attended school at

6 Strong Vincent as 7th graders in 2001. There was --

7 THE COURT: Excuse me, can you see that. Some

8 jurors are shaking their heads. It's only picking up a portion

9 of it on the screen.

10 MR. OLDS: We're going to go through it

11 sequentially.

12 THE COURT: All right, that's okay. But it's still

13 blurry for some members of the jury, can you sharpen it a bit

14 or is that the best you can do. Move the board closer to the

15 jury, that will help, too.

16 MR. OLDS: This is a time line. As I was saying,

17 the girls started school at Strong Vincent -- can you all see

18 that. The girls started school at Strong Vincent in September

19 of 2001 as 7th graders. They were both special needs children.

20 Both had a history of special education. Kristina had tested

21 as having lower cognitive skills, almost borderline mentally

22 deficient. Rachel, her parents, her father has a hearing

23 disorder, he can't hear. And you'll hear in testimony he has a

24 speech disorder. She has verbal problems. And they were both
25 in special education. There was a -- it was an urban school,

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1 and they were in a sense, I guess vulnerable kids because
2 Kristina was very small at the time, 4'8." And they both had
3 the special needs. And they had some encounters, unpleasant
4 encounters with other students in the fall of 2001.

5 But the assault occurred, as I said, on December --
6 well, the assault occurred, according to the police records, on
7 December 19th. I'll be honest with you, Rachel and Kristina
8 recalled that the assaults happened earlier than that day. The
9 records at the time indicate that, from the school district,
10 when the school district finally came around to investigate the
11 assault, they put a date on it, December 19th. But we have the
12 assault occurred across the street from the school sometime
13 after 6 p.m., and the kids were there because there was an
14 after-school detention program that let out at 6:00.

15 I indicated to you that the school district
16 officials learned of sexual activity, and that was on December
17 20, 2001. What happened was Ms. Cappabianca heard hall talk,

18 she says, and the hall talk was, well, something happened
19 between Kristina and Charles, something sexual happened between
20 Kristina and Charles.

21 Now, Charles, the boy who was involved, you'll see
22 has sort of a discipline record this thick, in actuality the
23 school district officials were on the verge of getting him out
24 of the school because he presented such a behavioral problem.

25 There was another primary protagonist involved, a

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1 girl, a young girl named Becky, who instigated the boys, sort
2 of set it up and orchestrated this matter. Eventually, Becky
3 and Charles were both put in the juvenile system, they were
4 sent away for what they did to Kristina and Rachel.

5 Anyway, on December 20, 2001, Ms. Cappabianca heard
6 hall talk about sexual activity between Kristina and Charles,
7 and she went and talked to the school principal, Janet Woods.
8 Now, Ms. Woods told Ms. Cappabianca, well, why don't you go
9 find out what's going on. And so Ms. Cappabianca spoke to
10 Kristina and to Charles.

11 Now, Kristina is somewhat limited in her ability to

12 communicate, to express herself. But there's no dispute that
13 when Kristina and Ms. Cappabianca talked, Ms. Cappabianca asked
14 her, did something happen between you and Charles, was there
15 some kind of sexual activity. Kristina said yes, there was.
16 Kristina will say that in fact she told Ms. Cappabianca because
17 Kristina being -- the type of person that she is, she was
18 petite, she had developed a relationship with Ms. Cappabianca,
19 she looked up to Ms. Cappabianca, wanted to please her, and
20 trusted Ms. Cappabianca. Kristina said yes, something
21 happened.

22 Ms. Cappabianca went to Charles Bibbs, who said oh,
23 no, Ms. Cappabianca, nothing happened. That's just Kristina
24 talking because she likes you so much. Ms. Cappabianca went
25 back to Ms. Woods and they decided that, well, they were going

1 to believe Charles, that nothing had happened. In fact, we
2 know that both Kristina and Rachel were sexually, violently
3 sexually assaulted, raped at least the day before.

4 This happened on December 20th, the last day of
5 school was December 21st before the holiday, the Christmas

6 holidays. And the school resumed down here, January 2nd.

7 When the girls went back to school, they were -- the middle

8 school students sort of saw them as easy victims, they were

9 taunted and mocked. Boys who approached Rachel in the hallway

10 and say will you give us oral sex. This was going on on a

11 daily basis, January 2, 2002.

12 January 4th, which is Friday, Kristina is in the

13 kitchen of her house, this is after school, and she hears her

14 sister say, you know, mom, all the kids are joking about

15 Kristina and in giving oral sex, they want me to give oral sex.

16 And Kristina had been unable, she had talked to Ms.

17 Cappabianca, she had been unable to talk to anyone else.

18 When she heard that, she took her hand, her arm and

19 she put it, she jammed it down onto the frying pan on the stove

20 and burned herself. She had to go Millcreek Hospital and she

21 was admitted as a psychiatric admission.

22 Sometime over that week, sometime over that weekend,

23 which would be these two days right here, Kristina confides in

24 her mother and says, tells her what happened. And she also

25 tells her mother that Ms. Cappabianca had known about what had

1 happened before Christmas. And she tells something to her
2 mother that, actually it wasn't this exchange between Ms.
3 Cappabianca and Kristina, there is no dispute about it. But
4 when Kristina and Ms. Cappabianca, when Ms. Cappabianca was
5 conducting her investigation and asked Kristina about it and
6 had a talk with her, Ms. Cappabianca had said, Kristina, you
7 know, that's what adults do when they're in love. That was
8 what Ms. Cappabianca had said back here on December 20th.

9 So Kristina's mother learned on January, sometime
10 that weekend of January 5th and January 6th, that her daughter
11 had been sexually assaulted at school. And she goes and she
12 talks to Ms. Cappabianca about it on Monday, January 7th.

13 Ms. Cappabianca tries to reassure Ms. Long about
14 what's going on. But nothing really is done about it. In
15 fact, on December 20th, even though Kristina admitted, Kristina
16 said yes, something happened, Ms. Cappabianca didn't call Ms.
17 Long, didn't call and tell her well, your 12-year-old daughter
18 was involved in some kind of sexual activity.

19 So on January 7th, Ms. Cappabianca hears from
20 Kristina's mother, hears that Kristina's in the hospital and

21 several incidents happened to Rachel then. Now, Rachel, as you
22 can tell from her picture, she was a little bit more mature
23 looking than Kristina back then. Rachel had been a magnet for
24 these bad kids. In one instance some kids got her, backed her
25 up against a locker, tried to grab at her asking for oral sex.

9

1 On another instance, on January 7th, Becky
2 resurfaces in school, and she and another boy push Kristina
3 down the steps and she's taunting Kristina, he wants oral sex,
4 he wants oral sex, excuse me, taunting Rachel, he wants oral
5 sex, give him oral sex, until the teacher breaks up that
6 encounter and sends Rachel to see Ms. Cappabianca.

7 Now, sometime that week, and I'll get to why there
8 is a little bit of confusion about the dates. Sometime that
9 week, Ms. Cappabianca had a conversation with Mr. Polancy on
10 the phone, we think it was January 7th. It was after this
11 incident that Rachel was sent to her office. And Rachel is
12 sitting in front of Ms. Cappabianca, Ms. Cappabianca calls Mr.
13 Polancy and she says, you know, you have to do something about
14 your daughter, she has a filthy mouth and she's a dirty little

15 girl. You need to discipline her. You need to take care of

16 her.

17 Rachel hears that, that angers Rachel's father. But

18 Ms. Cappabianca says nothing about what had happened to Rachel.

19 And, in fact, Rachel has gone to Ms. Cappabianca repeatedly

20 saying please keep these kids away from me.

21 That night Rachel is sent to PASS -- which is this

22 after-school program. And after PASS that very night, Charles,

23 this boy that sexually assaulted her on December 20th, Charles

24 and another boy, whose identity the school district probably

25 knows, but whose identity was never confirmed, grabbed and

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1 accosted Rachel again. Rachel was sent to PASS for being out

2 of class. After PASS, Charles and this other boy that stocked

3 Rachel, the other boys attempt to force Rachel to have oral sex

4 again. He has his penis in her face, but an adult comes by and

5 breaks that up at that time.

6 Now, on January 9th, January 7th would be a Monday,

7 on January 9th, Rachel can't hold it in any more. Kristina

8 lasted until January 4th, when she injured herself. On January

9 9th, Rachel explodes in class, you have to excuse my language,

10 but she screams out tell these guys I don't want to suck their

11 dick. She's sent to Ms. Cappabianca for that incident.

12 Finally, Ms. Cappabianca and Ms. Woods start to

13 listen to Rachel. And they listened to her whole story. She

14 had attempted to talk to Ms. Cappabianca before, but they

15 finally listened to her. Perhaps it's because they also know

16 Kristina has been hospitalized by now.

17 So January 9th they listen to Rachel. And this gets

18 to the point where things are somewhat confused. They'll

19 testify that they spent January 9th and January 10th, these two

20 days, two whole days, interviewing students, talking to the

21 parents, trying to find out what had happened back here on

22 December 20th.

23 And I say it's a little confusing because they spent

24 all day meeting supposedly with parents. But there is no notes

25 of any meetings, there's one statement from one student.

1 Although, there were five or six students involved. They had

2 acknowledged whatever papers or notes that they made those two

3 days they destroyed. And they don't exist. So we don't have

4 the luxury of having some kind of documentary reference about

5 what happened.

6 One thing that didn't happen on January 9th,

7 however, after Ms. Cappabianca and Ms. Woods learned about

8 Rachel, was they didn't call Rachel's dad. And say you know,

9 by the way, your daughter was sexually assaulted multiple times

10 on December 20th and on January 7th. They didn't call him at

11 all. They did run into him that evening. He came to pick up

12 Rachel after PASS. And they said oh, by the way, maybe you

13 want to come in for a meeting tomorrow morning. And he did.

14 He then at a meeting with them on January 10th, the

15 next day, Ms. Woods says at that meeting are you ready for

16 this. Your daughter has been giving oral sex to a bunch of

17 guys around the school. And Mr. Polancy says not my daughter.

18 He says have you called the police. And they said no, they

19 hadn't. He says well, I'm going to. And they said don't,

20 we're investigating this, we have this under control.

21 That day, that evening after school, Ms. Woods, for

22 the first time, involves the school district police and calls

23 the Erie Chief of Police and says well, maybe you better send

24 some officers over here tomorrow because we have a situation.

25 And the police officers go over there the next day and Rachel

12

1 eventually gives a statement. Rachel leaves Strong Vincent

2 never to return. Kristina would never return, either.

3 Now, a couple of things. The students that were

4 involved in the assaults of Rachel and Kristina were Charles,

5 Becky, an older student named Anthony, there was a student

6 named Antonio. There was a student I told you about, he is the

7 one who had his penis in Rachel's face on Monday. They think

8 they know who he was, but they never did anything about it.

9 Not one of those students was subject to any disciplinary

10 proceedings at Strong Vincent. In other words, as late as

11 January 23rd, almost two weeks later, the police come to the

12 school and arrest one of the guys who assaulted Rachel, who

13 sexually, who forced her to have oral sex with an 18-year-old

14 guy.

15 Becky, who was the instigator, and Becky was one of

16 those kids who, excuse me, another kid they should be trying to

17 get rid of, she was one of these kids that were always stirring

18 up problems. She was the one that concocted this original

19 scheme, and encouraged the boys to rape Rachel and Kristina.
20 She was involved in this incident that happened at the school
21 where she forced Rachel down the stairs and was encouraging the
22 boy to try to rape, I guess rape Rachel right on the school.
23 Becky is apparently still in school on January 23rd, no
24 disciplinary proceedings against Becky. Well, the police
25 arrested her. Her and Charles Bibbs and Anthony -- excuse me,

13

1 Charles, who raped both Kristina and Rachel. Anthony, who
2 raped Rachel. And Becky, who instigated the whole thing, were
3 thrown into the juvenile court system. And, as I said, they
4 each were sent away to institutions. They were found guilty of
5 various crimes relative to Rachel and Kristina.

6 Now, Rachel and Kristina, you'll hear testimony from
7 our forensic, we have a forensic expert, Dr. Stephen Schachner,
8 who's a psychologist, and provides testimony to courts in
9 custody cases. He'll say that it's when children encounter,
10 when children are involved in sexual activity like this, they
11 suffer from a disorder called post-traumatic stress syndrome.
12 Which is what happens to some of our troops who are in Iraq or

13 if you're in an automobile accident, when something awful

14 happens, you have a mental disorder.

15 He'll say that when Rachel and Kristina were in

16 school on those days sitting in the same classroom, this is

17 after December 20th, sitting in that same classroom with

18 Charles Bibbs, excuse me, Charles, just so you know since we're

19 dealing with juveniles, we don't always use their last name.

20 And we know who did it, but sometimes it just kinds of comes

21 out and I'll say his last name. But we're trying to just use

22 first names. He'll say that when Rachel and Kristina are in

23 the classroom with these kids that assaulted them, are in the

24 hallway being threatened and unable to express what happened to

25 themselves and unable to find an adult who will listen to them,

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1 it's like each time this happens, that they're experiencing the

2 rape, the initial rape again.

3 So the school heard about it on December 20th and

4 let everyone in until January 11th, when Rachel and Kristina

5 were finally gone. And there were numerous encounters

6 involving Rachel and Becky or Rachel and Charles. And Charles

7 was in the classroom with Kristina after this happened. I
8 mean, the guy who raped her was sitting in the same room with
9 her at school. And this had just an unimaginable effect on
10 Rachel and Kristina.

11 Their life before the assault was -- there had been
12 some tribulations and trials in Kristina's life. I can't say
13 that their life before the assault was a bed of roses.
14 Kristina had been in foster care. Rachel, her father is deaf
15 and her mother has a very serious illness. But these kids were
16 generally sort of adapting or they were participating in life.
17 As you would expect a 12-year-old to participate. They might
18 not have been the best students, but they were pretty good
19 kids. Neither one of them had much of a psychiatric history
20 and they were pretty good kids.

21 After these events, what happened is, it's as if
22 they went to -- what happened was they were sent to an
23 alternative school. An alternative school means they were sent
24 to a school that gives more attention to the kids maybe. But
25 it had a bunch of kids with behavior problems there. Kids who

1 couldn't make it in the regular schools were in this school and
2 that's what Kristina and Rachel were considered.

3 Kristina was so relieved to be away from the
4 harassment that she had suffered, she adapted to this school.
5 But Rachel couldn't understand, well, why am I here with bad
6 kids, and the kids who raped me are still at Strong Vincent.

7 Both Rachel and Kristina went through a period of
8 time where there were multiple hospitalizations. Rachel was
9 hospitalized twice going into the future. She became a
10 different person. She was a different person. She became, she
11 was a child before this happened and she was a street person, a
12 lady of the street after that. At one point she stabbed her
13 father. Another point she was in the hospital because she got
14 into a fight with her mother. She engaged in delinquent
15 behavior. She herself was placed in juvenile institutions.

16 And Kristina, Kristina was placed, she had a problem
17 with delinquency, her mother couldn't take care of her. She
18 also was placed in institutions. And these girls, you know,
19 it's like they melted. I mean, it was totally different for
20 them after this event and before this event. At the end of the
21 case -- and you will hear testimony about that. They are doing

22 better now. But this is, what happened to them is something
23 that will live with them and live with their families all of
24 their lives.

25 At the end of the case, the judge will give you

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1 instructions on whether we have a case or not, and what you can
2 do with it if we have a case. At the end of the case, I'll be
3 back, after you hear the evidence, I'll be back to argue that
4 you should award damages against the school district to
5 compensate Rachel and Kristina for what happened here.

6 Maybe just one or a couple of technical points which
7 I want to deal with. You know, the way a case is presented,
8 each witness, you can't have everyone talking at once and so
9 you don't get the whole story of the case until all the
10 witnesses have testified. More generally, it's almost as if --
11 I've heard lawyers use the analogy of a jigsaw puzzle. That
12 people have different pieces they bring out on the stand, they
13 put the pieces on the board. You don't get a picture of the
14 whole case until the last witness has put the last piece of the
15 jigsaw puzzle, and then you can understand what has happened.

16 In the middle maybe you'll hear testimony that strongly favors
17 us or strongly favors the school district in your mind, but you
18 need to wait until all the pieces of the puzzle are up there to
19 understand it.

20 There might be times, I guess the other point I
21 would like to make is there might be times when either Rachel
22 or Kristina because of, you know, the sensitivity of how much
23 this hurts, you might see them leaving the courtroom from time
24 to time. And I just wanted to alert you about that. Thank
25 you, very much for your attention.

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1 THE COURT: All right, Mr. Marnen.

2 MR. MARNEN: If it please the court, thank you.

3 Ladies and gentlemen, again, I'm Jim Marnen, I represent the
4 Erie School District. My other client is Linda Cappabianca,
5 she's sitting over there at the table.

6 There are some things in this case that we agree on,
7 that both sides agree upon. I mean one obvious thing that we
8 agree upon is what happened to these two girls was tragic.
9 There's no absolutely no question about that. But that's not

10 really the focus of the case.

11 The focus of this case and what this case is all
12 about in terms of whether Erie School District is responsible
13 for this, boils down to two words, deliberate indifference.
14 For you to find in favor of the plaintiffs against Erie School
15 District, you have to find that Erie School District, through
16 the persons of Linda Cappabianca and Janet Woods, were
17 deliberately indifferent to the situation here.

18 Linda Cappabianca was the assistant principal at
19 Strong Vincent at the time this happened. She was the
20 assistant principal of the middle school. Let me back up one
21 second.

22 Strong Vincent High School in this school year,
23 2001-2002, had both a middle and a high school. The middle
24 school, obviously, is 7 through 9, and the high school is 10
25 through 12. Linda was the assistant principal for all the

1 middle school kids. There were also two assistant principals
2 for the senior high school kids, different people, not
3 concerned here. The principal of the school was Janet Woods.

4 The Erie School District in this particular
5 situation acted through Janet Woods and Linda Cappabianca. So
6 what you have to determine is that issue, again, were Janet
7 Woods and were Linda Cappabianca deliberately indifferent to
8 what happened here. And we have a significant difference of a
9 position on that. Some of the things Mr. Olds said I agree
10 with, but on fundamental terms we are in complete disagreement.

11 I'm going to repeat a couple things, it's
12 unavoidable, I apologize for that, but just to make it
13 cohesive. This happened at a time when these two girls were in
14 7th grade. Both had just come to this school that year, August
15 30th, '01. Rachel was 13, she turned 13 in November of that
16 year, of 2001. Kristina was 12, and was 12 through the events
17 that we're talking about.

18 The assailants, Becky, you heard her name, I will
19 try to avoid using last names, too, that's a sensitive topic
20 when you're talking about minors. Becky was 15. Becky was in
21 the 8th grade. Becky, obviously, was a girl. Charles, a boy,
22 was 14, in the 8th grade. And the third assailant was Anthony,
23 who was 17 at the time this happened. He turned 18 about 11 or
24 12 days later. He was 17 at the time of this incident, this
25 rape. That's exactly what it was, a rape. In fact, there were

1 multiple rapes. Rachel, it was multiple times. Kristina, it
2 was once. It was all oral sex. But they were rapes, no
3 question about it. They were coerced into doing this, it was
4 awful. And in the case of Kristina, she was only 12-years-old,
5 she was legally incapable of consent. Rachel certainly, maybe
6 technically, obviously, was way too young to ever engage in
7 anything like this. It was an awful event. It happened across
8 the street from Strong Vincent, not on school property, it
9 happened at night when it was dark. And it happened on
10 December 19, 2001. It was between about 6:30 and 7 o'clock at
11 night. Kids congregate over there, there were seven or eight
12 of them. Two of those kids were Kristina and Rachel. And this
13 Becky got things going, forced these girls to do these awful
14 things.

15 Some of the kids were witnesses. One of those kids
16 was the reason a prosecution, was a big help to the prosecution
17 of Antonio. He was a principal witness in the prosecution of
18 these kids. He cooperated with the investigation, with the
19 school and the police.

20 The very next day -- December 19th was three days
21 before Christmas vacation. That's important here because there
22 was a period of time when school was closed, and nothing was
23 going on inside that school. December 19th was a Wednesday.
24 December 20th, obviously, a Thursday and Friday. The 21st was
25 the last day of school before Christmas vacation began.

20

1 Christmas vacation began on Saturday the 22nd. The kids came
2 back to school on January 2nd, that's a Wednesday.

3 One week later, January 9th, is when Janet Woods and
4 Linda Cappabianca first became aware of these rapes, that
5 occurred on December 19th. That's the 8th school day after the
6 rapes occurred. They learned about it and immediately took
7 action.

8 Mr. Olds talked about a conversation that occurred
9 or a couple conversations that occurred on December 20, 2001.
10 That is the day after the rapes occurred. And on that day
11 Linda Cappabianca did hear hall talk -- little bits, nothing
12 really clear about what was going on. But the tone of it was
13 generally that there had been some kind of sexual contact

14 between Kristina and this Charles, nothing was said about
15 Rachel. Nothing was said about any coercion, nothing was said
16 about rape. Nothing was said about oral sex. It was just
17 something, and for all Linda knew, it was hand holding. Or it
18 could have been something more significant than hand holding.
19 She also knows she's dealing with a 12-year-old girl. When
20 you're talking about anything of that nature, that general
21 nature, that is something to be concerned about. And she did
22 have a good relationship with Kristina. So that day she had a
23 conversation with Kristina and said something like what am I
24 hearing about you and Charles, is something going on there.
25 And Kristina said yes. She didn't say I was raped yesterday.

21

1 She said just yes to this general question. And Ms.
2 Cappabianca told her well, Kristina, that is the kind of thing,
3 she's talking generally about sexual contact of any kind,
4 that's what people who are grown up and are in love do. So the
5 message is, you know, watch what you're doing here. Now, she's
6 concerned enough about it, too, that she talks with Charles.
7 And Charles denies it. I'm not terribly surprised that he

8 denied it, but he denies anything happened. She didn't
9 confront him about oral sex or rape or anything like that, it
10 was another general question to Charles, what happened here.

11 Nothing's going on, Ms. Cappabianca.

12 Now, Linda talked with Janet Woods. Janet Woods,
13 the principal, she went and saw her, they talked about that.
14 And decided, well, you know, we're going to keep our eye on
15 this. Because Charles is a bit of a discipline problem, we
16 need to watch this, so we're going to watch it.

17 And then, as I said, Christmas vacation is a couple
18 days later. They all come back on January 2nd. And Kristina
19 is only there three days, the 2nd, 3rd and the 4th. And that
20 evening, the 4th, Friday, she has her event at home. That is
21 her sister comes home and tells her mother about hearing about
22 this stuff about oral sex about Kristina. Mom asks Kristina
23 what's this all about. Nothing is said about coerced or
24 anything of that nature. But it's oral sex, mom is immediately
25 concerned about that, obviously. She talks to Kristina about

1 it. Kristina doesn't want to talk about it, as I understand

2 the testimony. And, eventually, she intentionally injures
3 herself by burning her hand on a frying pan. She's distraught,
4 and they take her to Millcreek Community Hospital. She stayed
5 there for a week as inpatient. So she never goes back into
6 Strong Vincent after the 4th.

7 Rachel on Monday, January 7th, and this is not only
8 Rachel, I accept this, January 7th she talked about this, she
9 told Ms. Cappabianca about it. And Ms. Cappabianca passed this
10 on to the police, you'll see it in the police report eventually
11 in the testimony. On January 7th, Becky, up to her old tricks,
12 is trying to coerce her to give a boy oral sex right in the
13 high school. And Rachel gets out of that because a teacher
14 comes by. And eventually she sees Ms. Cappabianca that day,
15 but not about that, about something else. She says she didn't
16 even tell Ms. Cappabianca about, didn't talk about what
17 happened down there.

18 And then later on Rachel says after school back
19 in -- by the way, the event on December 19th occurred in and
20 around a laundromat, that's at 8th and Washington. Some of you
21 folks on the jury know where the area is. The actual rapes
22 occurred behind the laundromat.

23 While on January 7th, Rachel was at the laundromat

24 again and that is when she's accosted. That's when the other

25 boy placed his penis against her face trying to get her to do

23

1 this again. January 9th in the morning, in the classroom of a

2 teacher named Vikki Scully, who was a learning support teacher,

3 Rachel had this outburst. She said she was being harassed by

4 somebody about all of this. And she spoke loudly and she used

5 bad language.

6 And Vikki Scully I think will testify that she was

7 really surprised because Rachel was a good kid who was quiet,

8 and didn't say anything like this. She was taken aback. But,

9 nonetheless, because of the nature of the conduct, she sent her

10 to see Linda Cappabianca, who's the assistant principal. And

11 if you remember your high school days, the assistant principal

12 is the disciplinarian. So she was sent there.

13 And as Linda talked to Rachel about this, what's

14 going on, Rachel, what happened, Rachel tells her about the

15 rapes of December 19th. And immediately Linda Cappabianca does

16 what she's supposed to do. Gets Janet Woods involved in it,

17 and immediately they do a number of things, they are all the

18 right things. They get a hold of -- they want to find out

19 what's going on. Rather than running off half-cocked, they

20 start talking to the kids involved. They interview,

21 interrogate, whatever you want to call it, questioning the kids

22 who are over there that night. Names they got from Rachel and

23 from others as they came in. There were seven or eight of

24 them.

25 Over the next two days, and they can't recount

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1 minute by minute, but in the next two days they did a number of

2 things. They get the parents in. You can't talk to kids about

3 things like this without the parents there. The talk to the

4 parents, they talked with the kids. They did get the school

5 resource officers involved, they're police officers who work as

6 police officers and sometimes there at the school for security

7 and related reasons. They got them involved in it. They got

8 in touch with the central administration and told them what was

9 going on. Ms. Woods will tell you how she was concerned about

10 these girls and their emotional situation at this point. They

11 also contacted the police.

12 I'm not going to argue with Mr. Olds right now.

13 Our position is that they contacted the police on their own.

14 They weren't pushed into it by anybody. They were just trying

15 to find out what happened before they contacted the police.

16 They got a hold of the police within 24 hours. The police were

17 at the school on the morning of January 11th, that is two days

18 after they first found out about this. And the police

19 commenced their investigation that day. They interviewed,

20 Linda Cappabianca gave the police a summary that she had

21 compiled from her investigation.

22 She was also interviewed by Pamela Barber, who was

23 one of the first police officers at the scene. Pamela Barber

24 prepared a detailed report based in great part upon what Linda

25 Cappabianca told her. And she also helped Antonio, the

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1 cooperative witness, put together a statement. That morning

2 the police interviewed Antonio and Becky. Becky denied

3 everything. She admitted being there, but denied any bad

4 conduct. And they interviewed Rachel late that morning at the

5 police station.

6 And as Mr. Olds said, the police prosecuted these
7 kids. They went through the juvenile delinquency system, they
8 were both convicted, adjudicated delinquent I think is the
9 technical term. And they were sent away to institutions.

10 Charles, the day he was in there with his father,
11 found out what was going on, his parents immediately hauled him
12 out of Erie School District and put him out at First Assembly
13 Christian Academy. So it wasn't possible to discipline him, he
14 was gone. The other kids were in fact sent to alternative
15 education, Becky and Anthony. As I said, they were arrested.
16 Anthony was arrested, I think it was January 23rd. Yes. Becky
17 was arrested January 29th. And Charles was arrested, for some
18 reason there was a delay, not until February 20th. All three
19 were sent away. The situation was dealt with.

20 It's our position in this case that Janet Woods and
21 Linda Cappabianca did not learn about the rapes and the
22 harassment, no one came to them and told them anything about
23 this, they were not otherwise aware of it until January 9,
24 2002. That was the eighth day following the rapes, the eighth
25 school day. Over the next three days they did everything they

1 could do to get this matter resolved. They handled the matter
2 proficiently and efficiently. The matter was disposed of in a
3 proper manner.

4 There was no contact thereafter between the
5 assailants and Rachel and Kristina. Kristina and Rachel did go
6 to another school. You're going to hear all about that. They
7 went there to get them out of the environment and give them
8 some extra attention, having gone through the trauma they went
9 through.

10 It is our position in a nutshell that there was no
11 deliberate indifference to anything, that the matter was
12 handled properly. Thank you, very much.

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14 (Whereupon, the Opening Statements were concluded.)

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1 CERTIFICATE

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5 I, Ronald J. Bench, certify that the foregoing is a

6 correct transcript from the record of proceedings in the

7 above-entitled matter.

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12 _____

13 Ronald J. Bench

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